

113 FERC ¶ 61,041
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

KGen Hinds LLC

Docket No. ER05-1358-000

ORDER ACCEPTING AND SUSPENDING PROPOSED RATE SCHEDULE AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued October 14, 2005)

1. On August 17, 2005, KGen Hinds LLC (Hinds),¹ filed a proposed rate schedule (KGen Hinds Rate Schedule FERC No. 1) specifying its cost-based revenue requirement for providing Reactive Support and Voltage Control from Generation Sources Services (reactive power) from its natural gas-fired, combined cycle electric generation facility (Facility) located in Hinds County, Mississippi. Hinds requests that the Commission grant any necessary waivers and accept the proposed the rate schedule effective August 18, 2005. As discussed below, we waive the notice period and accept the proposed rate schedule for filing, suspend it for a nominal period, to become effective August 18, 2005, through October 31, 2005, subject to refund and conditions, and establish hearing and settlement judge procedures.

¹ Hinds states that it is a Delaware limited partnership created solely for the purpose of owning the Facility. Hinds is wholly-owned by KGen Power LLC, which in turn is wholly owned by KGen LLC. Hinds is authorized to make wholesale sales of power at market-based rates. See *Duke Energy Hinds, LLC*, Letter Order, Docket No. ER01-691-000(issued January 9, 2001) and *Duke Energy Hinds, LLC*, Letter Order, Docket No. ER01-691-001 (issued February 13, 2001).

The Instant Filing

2. Hinds states that it owns and operates an approximately 520 MW natural gas-fired, combined-cycle generation facility located in Hinds County, Mississippi, in Entergy Mississippi, Inc.'s (Entergy Mississippi) control area. It states that the Facility has never been owned by an investor-owned vertically integrated utility; nor has the Facility's costs been included in the rate base of a load-serving entity. Hinds states that its obligation to provide reactive power to Entergy Mississippi and its right to receive compensation for such service is set forth in section 4.7 of the Amended and Restated Interconnection Agreement by and between Duke Energy Hinds, LLC and Entergy Mississippi. Hinds states that Order No. 2003-A² further establishes its right to receive compensation for reactive power because Entergy-owned generation receives payment for reactive power.

3. The proposed rate schedule sets forth a cost-based annual revenue requirement of \$1,111,803.72, and a total monthly charge of \$92,650.31, which represents Hinds's proposed revenue requirements for reactive power. The revenue requirements are broken into three components: (1) fixed costs attributable to reactive power production capability (Fixed Capability Component); (2) increased generator and step-up transformer heating losses that result from the production of reactive power (Heating Losses (Component); and (3) lost opportunity costs in the event the Facility is directed to modify its energy output to produce additional reactive power (Lost Opportunity Cost Component).

4. Hinds states that because it is a non-utility generator not generally subject to traditional rate regulation, and what it terms as the relatively small revenue requirements proposed in its filing, it has sought to avoid any potential issues regarding return on equity in this filing by incorporating in its annual carrying cost, a conservative return on equity based on a proxy of a Commission-accepted percentage reflected in an Entergy Services, Inc.'s filing on behalf of the Entergy Corporation operating companies, including Entergy Mississippi, the transmission owner with which the Facility is interconnected.

² Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs., ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats & Regs. ¶ 31,171 at P 56 (2004), *order on reh'g*, Order No. 2003-C, 70 Fed. Reg. 37,661 (June 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005).

5. Hinds requests waiver of the Commission's 60-day prior notice requirement so that its proposed rate schedule may become effective August 18, 2005. Hinds also requests waiver of the detailed cost of service requirements set forth in Part 35, many of which it claims are not applicable to a charge for Reactive Service, and of various other regulations in Part 35.

Notice of Filing, Interventions and Protests

6. Notice of Hinds's filing was published in the *Federal Register*, 70 Fed. Reg. 50312 (2005) with comments, interventions, and protests due on or before September 7, 2005. On September 7, 2005, Entergy filed a motion to intervene and protest.

7. In its protest, Entergy argues that Hinds's proposed reactive power charges are contrary to the terms of the IOA between Hinds and Entergy Mississippi. Entergy states that section 4.7.1 of the IOA sets forth the interconnection customer's obligation to supply reactive power within the established dead band. Entergy argues that Hinds is only obligated to provide reactive power if its facilities are operating and then only within the power factor range required by the IOA and Good Utility Practice. Entergy states that if Hinds is not operating, it is not obligated to provide reactive power. Entergy also states that section 4.7.1 provides for use-based compensation for reactive power, compensation only when Hinds actually provides the service, and not the rate design proposed by Hinds. Entergy also argues that the IOA allows Hinds to file a market-based rate schedule for reactive power but that Hinds has submitted an "alleged" cost-based rate, which is not allowed by the IOA. According to Entergy, the IOA allows Hinds to request compensation for reactive power produced outside the dead band if such is requested by Entergy to alleviate an emergency.

8. Entergy also argues that Hinds's proposed imposition of a reactive power charge is unjustified and contrary to the Commission's self-supply policies, that the specific reactive power charges that Hinds seeks to impose are not supported by its filing, and that the Commission should find that the filing is deficient. If the Commission should find that the filing is not deficient, Entergy requests that the commission deny Hinds's requested waiver of the prior notice requirements, suspend the proposed rates for the maximum period and set it for hearing.

9 On September 22, 2005, Hinds filed a response to Entergy's protest.

Discussion

Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely unopposed motion to intervene filed by Entergy serves to make it a party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Hinds's answer and will, therefore, reject it.

11. Hinds requests waiver of the Commission's notice requirements so that its proposed reactive power rate schedule may become effective on August 18, 2005, which is the day after the date of filing. For good cause, we will grant waiver of the notice requirement and accept the filing, subject to refund and to the outcome of the hearing and settlement judge procedures, effective August 18, 2005, as proposed. We will also grant Hinds's request for waiver of the detailed cost of service requirements of Part 35 of the Commission's Regulations. Hinds is a non-utility generator not generally subject to traditional rate regulation. However, Hinds is on notice that it bears the burden of proving that its proposed charges are just and reasonable based on the materials included in its filing.

Suspension and Hearing

12. The proposed rate schedule submitted by Hinds raises issues of material fact that cannot be resolved on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

13. The Commission's preliminary analysis of Hinds's filing indicates that it has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will accept Hinds's proposed rate schedule for filing, suspend it for a nominal period, to become effective August 18, 2005, subject to refund, and set it for hearing and settlement judge procedures as ordered below.

14. In an order issued today in Docket No. ER05-1432-000, we granted a proposal filed by Entergy to set to zero the charge currently levied by Entergy for the provision of

reactive power from its own generating units effective November 1, 2005.³ In that order we also granted an associated petition for declaratory by Entergy that, if Entergy does not compensate its own or affiliated generators for reactive power service provided to transmission customers within the generators' specific power factor range (or "dead band"), then Entergy need not on a prospective basis compensate a non-affiliate generator for maintaining reactive power within its dead band under Order No. 2003. As a consequence, effective November 1, 2005, Hinds and other reactive power generators will no longer be permitted to charge Entergy for costs related to within the band reactive power provided to Entergy. This means that the hearing established herein will only determine Hinds's reactive power revenue requirements for the period August 18, 2005, through October 31, 2005. Consistent with our order issued contemporaneously herewith in Docket No. EL05-149-000, et al., effective November 1, 2005, the charges proposed in the instant filing will become unjust and reasonable because they would recover within the band costs that Hinds is not permitted to recover on or after that date. Accordingly, within 15 days of this order, Hinds must file to remove the subject rate schedule from its tariff effective November 1, 2005. This action is without prejudice to Hinds filing under section 205 of the FPA to implement a rate schedule and revenue requirement for outside the band reactive power to be effective on or after November 1, 2005.

15. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to rule 603 of the Commission's Rules of Practice and Procedure.⁴ If the parties desire, they may, by mutual agreement, request a specific judge in the proceeding. Otherwise, the Chief Judge will select a judge for this purpose.⁵ The settlement judge shall report to the Chief Judge and Commission within sixty days of the date of this order concerning the status settlement discussions. Based on this report, the Chief Judge shall provide the parties

³ *Entergy Services, Inc.*, 113 FERC ¶ 61,040 (2005).

⁴ 18 C.F.R. § 385.603 (2005).

⁵ If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone at 202-502-8500 within five days of this order. The Commission's website contains a listing of Commission judges and a summary of their background and experience (www.ferc.gov-click on Office of Administrative Judges).

with additional time to continue their settlement discussions or provide for the commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Waiver of the 60-day notice requirement is granted and the proposed rate schedule is hereby accepted for filing, and suspended for a nominal period, to become effective August 18, 2005, through October 31, 2005,, subject to refund, and subject to the conditions of this order, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the proposed rate schedule. However, the hearing shall be held in abeyance to provide time for settlement judge, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Chief Judge and with the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Chief Judge and the Commission of the parties' progress towards settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.